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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,464	09/05/2003	Glen S. Axelrod	TFH047	8440
33047 7590 06/02/2011 GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101				
EXAMINER				
COLE, ELIZABETH M				
ART UNIT		PAPER NUMBER		
1798				
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06/02/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/656,464

**Applicant(s)**

AXELROD, GLEN S.

**Examiner**

ELIZABETH COLE

**Art Unit**

1798

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 24 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,9,12-14,19,20,22 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,9,12-14,19,20,22 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 12-14, 19-20, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Denesuk et al, U.S. Patent NO. 6,196,156 in view of Jordan, U.S. Patent No. 5,226,384 and Bottger et al, U.S. Patent NO 6,610, 618, Howland, U.S. Patent Application Publication 2003/0091785 or Johnson, U.S. Patent No. 696,567. Denesuk et al discloses an article for use by pets comprising a core which may comprise foam or other types of fillers such as synthetic and natural fibers, (col. 10, lines 28-41) and a fabric cover. The fabric cover may comprise two different types of fabric and each type of fabric only partially covers the core. See col. 10, line 60 – col. 11, line 7 and col. 11, lines 38-46 as well as example 4. Suitable fabrics include polyolefins, acetate, acrylic, nylons and polyesters. See col. 11, line 65 – col. 12, line 4. The fabrics can be woven, non-woven or knitted. See col. 9, lines 31-43. Denesuk differs from the claimed invention because Denesuk does not teach that at least one of the fibers should be a high strength fiber. Jordan teaches that high strength fabrics such as woven aramid fabrics can be used as at least one layer in multi layered covers for articles used by pets. See abstract. Jordan teaches using the high strength aramid fabrics as the inner layers and using softer fabrics such as cotton or cotton blends as an outer covering layer. See col 5, lines 38-46. A cotton fabric would necessarily have

fibers having tensile strength less than 50,000 psi and/or modulus less than 500,000 psi, since cotton fibers are not high strength fibers. Therefore, it would have been obvious to have employed high strength fibers for parts of the cover of Denesuk which would be most exposed to wear and tear, biting, chewing, etc., motivated by the expectation that this would enhance the durability of the bed. Jordan teaches employing high strength fiber containing fabrics to reinforce items used by pets, but does not teach forming multiple layers having different orientation wherein the layers are oriented at angles to each other. Each of Bottger, Howland and Johnson '567 teach that it is known in the art to form woven fabrics having different degrees of strength in the MD versus the CD and to layer the fabrics so that the axis of each fabric is at an angle relative to the other fabrics in order to enhance the strength of the finished product. See for example, col. 1, lines 9-26 of Johnson '567; Col. 3, lines 1-8 of Bottger and the abstract as well as the entire document of Howland. Therefore, it would have been obvious to have oriented different layers of the fabric of Jordan so that the axis of each fabric was at an angle relative to the other layer as taught by any one of Bottger, Johnson '567, or Howland, in order to arrive a fabric having controllable and increased strength. With regard to wear the high strength layers are placed, it would have been obvious to have placed the high strength layers on those portions of the article which would be expected to be most likely to be exposed to chewing or other types of wear and tear by the pet during use. With regard to the limitation that the multi-layer structure comprises an animal chew toy and is shaped such that end portions are for chewing, it is noted that the limitations are statements of intended use, stating that

the structure is used as a chew toy and that the end portions are for chewing. The end portions of the structure of Denesuk are capable of being used as a chew toy for chewing and thus meet the limitations.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Jordan, U.S. patent No. 5,226,384. . With regard to new claims 28 and 29, Jordan teaches forming the cover so that it is folded, so that it has a cylindrical shape and so that it has stitching at the ends. The cover of Jordan comprises multiple layers. The cover of Jordan comprises high strength fibers such as aramid fibers disposed in a woven fabric. Therefore, Jordan anticipates claims 28 and 29. See col. 3, lines 35-42, which teaches folded and overlapping the woven aramid fabric layers at the ends and stitching to join them as well as col. 3, lines 35-37 which teaches that the cover can have a tubular form, which is equated with the claimed cylindrical shape and, col. 4, lines 19-39, which teaches that the aramid fabric can be in the form of a woven fabric and col. 5, lines 38-46, which teaches an additional fabric layer may be provided.

5. Applicant's arguments filed 3/24/11 have been fully considered but they are not persuasive. Applicant argues that the claims as amended recite a multi layer structuring that comprises an animal chew toy and is shaped such that said end portions are for chewing. However, these limitations are statements of intended use. A recitation of the

intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In the instant case the structures of Denesuk and Jordan can be used as chew toys and any part, including end parts, could be used for chewing. The claims do not recite additional structure which distinguishes the claimed invention from the prior art structure.

6. Applicant also argues that the prior art does not teach the distinction of a body portions and end portions. However, any material is finite and will have end portions and will also have a body portion. Further, the placement of reinforcements on particular areas would have been obvious to one of ordinary skill in the art depending on what areas are exposed and would be most accessible for a pet to chew on. The ends of a bed would be more exposed and more likely to be chewed than a central portion.

7. With regard to the secondary references of Botgger, Howland and Johnson, Applicant argues that none of the references make up for the deficiency of the primary references. The arguments against the primary references are answered above.

8. With regard to claim 28, applicant argues that Jordan does not teach a cylindrical structure which is rolled, folded or twisted wherein the ends are stitched or tied together. However, see col. 3, lines 35-42 of Jordan, which teaches folded and overlapping the woven aramid fabric layers at the ends and stitching to join them as well as col. 3, lines 35-37 which teaches that the cover can have a tubular form, which is equated with the claimed cylindrical shape and, col. 4, lines 19-39, which teaches that the aramid fabric

can be in the form of a woven fabric and col. 5, lines 38-46, which teaches an additional fabric layer may be provided.

9. Further, as noted above, with regard to the intended use of the structure, A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

10. Applicant's amendments have overcome the 1112 2<sup>nd</sup> paragraph rejections.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Angela Ortiz may be reached at (571) 272-1206.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1798